MOTION FILED

DEC 23 1974

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-304

RICHARD A. GORDON, individually and as President of INDEPENDENT INVESTOR PROTECTIVE LEAGUE, an incorporated association, and in behalf of the membership thereof and in behalf of all persons similarly circumstanced,

Petitioners,

against

NEW YORK STOCK EXCHANGE, INC., AMERICAN STOCK EXCHANGE, INC., and MERRILL LYNCH, PIERCE, FENNER & SMITH, INC. and BACHE & COMPANY, INC., individually and as representatives of all member firms of the New York Stock Exchange and American Stock Exchange,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MOTION OF THE RETIREMENT BOARD OF THE TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

ADRIAN P. BURKE
Corporation Counsel of the City of New York
Municipal Building
New York, New York 10007
(212) 566-3929

and

JESSE CLIMENKO
330 Madison Avenue
New York, New York 10017
(212) 661-3200

Attorneys for Retirement Board of the Teachers' Retirement System of the City of New York, Amicus Curiae

Of Counsel:
SHEA GOULD CLIMENKO & KRAMER
330 Madison Avenue
New York, New York 10017

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Pursuant to Rule 42 of the United States Supreme Court Rules, the Retirement Board of the Teachers' Retirement

System of the City of New York (the "applicant") respectfully moves this Court for leave to file an *amicus curiae* brief herein urging reversal.

The consent of the attorneys for the petitioner herein has been obtained, but the attorneys for one of the respondents herein has refused to consent to the filing of a brief by the applicant as *amicus curiae*.

The applicant has an interest in this case in that the central question involved is the legality of the "fixed commission rates" charged by the New York Stock Exchange, Inc. and the American Stock Exchange, Inc. The primary function of the applicant is the administration of the Teachers' Retirement System of the City of New York, pursuant to Chapter 20, Title B, of the Administrative Code of the City of New York, under which it is vested with the responsibility for the investment of substantial annuity and pension funds for the benefit of public school teachers in the City of New York. Because of the wide diversity of applicant's securities investments, as required by law, the extremely large volume of funds administered by the applicant, and a conservative investment portfolio dictated by public policy, it deals almost exclusively through member firms of the New York Stock Exchange, Inc. and the American Stock Exchange, Inc., which exchanges are the primary markets for the public sale of securities. As a result, applicant must pay onerous commission fees which are fixed by these exchanges at an unreasonably high level in view of the actual cost of the services provided.

The *amicus curiae* brief will present facts and statistics relating to the economic impact of the fixed commission schedules of the major exchanges upon the retirement benefits of a large class of public employees. The brief of the petitioner herein in the Court of Appeals for the Second Circuit does not present such information, and applicant has no reason to believe that such information will be presented by the parties before this Court.

Such information is relevant to the disposition of this case in that it will demonstrate that fixed commission rates are contrary to the general public interest, are not consistent with the purposes and policies of the federal securities laws and are not necessary to make the Securities Exchange Act work.

In a case such as this where the petitioner stands in the stead of an extremely large and diverse class of investors, it is especially important that *amici curiae* be permitted to assist in the full presentation of the facts, issues and arguments.

We believe that Rule 42(4) of the United States Supreme Court Rules permits applicant to file an *amicus curiae* brief without proceeding by motion. However, this motion is being made as a protective measure in case a question is raised as to applicant's standing to so file.

For the foregoing reasons, it is respectfully requested that applicant's motion for leave to file an *amicus curiae* brief herein urging reversal be granted, or, in the alternative, that it be denied on the ground that applicant may

proceed without motion under Rule 42(4) of the United States Supreme Court Rules.

Respectfully submitted,

ADRIAN P. BURKE
Corporation Counsel of the
City of New York
Municipal Building
New York, New York 10007
(212) 566-3929

and

JESSE CLIMENKO
330 Madison Avenue
New York, New York 10017
(212) 661-3200

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